

Serial: **169012**

IN THE SUPREME COURT OF MISSISSIPPI

No. 2010-IA-00228-SCT

DAVID E. CONWILL

Appellant

v.

STATE OF MISSISSIPPI

Appellee

ORDER

This matter came before the Court en banc on the Court's own motion. By order entered on February 11, 2010, the Court granted the Petition for Interlocutory Appeal filed by counsel for David E. Conwill. After due consideration, the Court finds that the petition was improvidently granted and should be dismissed.

IT IS THEREFORE ORDERED that the Petition for Interlocutory Appeal filed by David E. Conwill, is hereby dismissed as improvidently granted.

SO ORDERED, this the 5TH day of May, 2011.

/s/ George C. Carlson, Jr.

GEORGE C. CARLSON, JR.,
PRESIDING JUSTICE
FOR THE COURT

TO DISMISS: CARLSON, P.J., RANDOLPH, LAMAR, PIERCE AND KING, JJ.

DICKINSON, P.J., OBJECTS TO THE ORDER WITH SEPARATE WRITTEN STATEMENT JOINED BY WALLER, C.J., KITCHENS AND CHANDLER, JJ.

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DICKINSON, PRESIDING JUSTICE, OBJECTING TO THE ORDER WITH SEPARATE WRITTEN STATEMENT:

¶1. David Conwill – who previously had received a ticket for driving under the influence (“DUI”) – was arrested in Madison County and charged with possessing cocaine found in his car. At a hearing, Conwill swore the drugs were not his; later the Madison County Sheriff’s Department recorded a telephone call in which Conwill admitted the drugs were his.

¶2. The Madison County District Attorney sent Conwill’s attorney a letter, pointing out the recorded admission, and offering a deal for Conwill to plead guilty to both the cocaine charge and the DUI. Conwill did plead guilty and was sentenced to five years, with four years suspended and one year to serve.

¶3. After Conwill began serving his sentence, the Madison County District Attorney returned to the Madison County grand jury and obtained an indictment against Conwill for perjury, related to Conwill’s initial denial that the cocaine was his. Because Conwill had pleaded guilty on the cocaine and felony DUI charges, the perjury indictment charged Conwill as a habitual offender.

¶4. Conwill filed a motion to dismiss the indictment, claiming in essence that his negotiations with the district attorney, and his guilty plea, prohibited a prosecution for perjury, because the false statement was made in connection with the cocaine charge to which the district attorney negotiated a plea. The trial judge denied the motion to dismiss, and Conwill filed an application for an interlocutory appeal, which we initially granted. Because, for reasons I am unable to comprehend, the Court now dismisses the interlocutory appeal, I respectfully dissent.

¶5. When the district attorney negotiated the plea, he knew all the facts and circumstances that led to the later perjury prosecution, and those facts and circumstances arose out of the same case. By persuading Conwill to plead guilty – which required him to swear in court that he was guilty – the district attorney assured himself of a perjury conviction, since Conwill’s two sworn statements contradicted each other.

¶6. The Court’s decision today raises serious questions about fairness and due process; and it stands as a dangerous precedent. I would order the indictment dismissed.

WALLER, C.J., KITCHENS AND CHANDLER, JJ., JOIN THIS SEPARATE WRITTEN STATEMENT.